

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**LOGISTICARE SOLUTIONS, INC.
a subsidiary of PROVIDENCE SERVICE
CORPORATION**

Respondent

and

Case No. 16-CA-134080

KATHERINE A. LEE, an Individual

Charging Party

**RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE**

Submitted By:
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Respondent Logisticare Solutions, Inc (“Respondent”), by and through their undersigned attorneys, and pursuant to Section 102.46 of the Board’s Rules and Regulations, hereby file their exceptions to the Decision and Order issued by Administrative Law Judge Joel Biblowitz (“ALJ”) on April 15, 2015. In accordance with Section 102.46(c), the analysis, rationale, and legal precedent supporting these exceptions are fully set forth in the accompany brief.

I.
EXCEPTIONS TO THE ALJ’S FINDINGS OF FACT

Respondent excepts to the following findings of fact and conclusions on the ground that they are not supported by the weight of the evidence in the record:

1. Respondent excepts to the ALJ’s finding and conclusion that the average lay person cannot reasonably be expected to discern the difference between lawsuits and NLRB proceedings. (ALJD at 4:37–4:39).
2. Respondent excepts to the ALJ’s finding and conclusion that based on Respondent’s Class and Collective Action Waiver and/or Employee Handbook Policy Respondents’ employees could reasonably assume that it also bars them from filing charges with the Board. (ALJD at 4:39–4:42).

II.
EXCEPTIONS TO THE ALJ’S CONCLUSIONS OF LAW

Respondent excepts to the following specific conclusions of law on the ground that they are not supported by the weight of the record evidence and are contrary to established law and Board policy.

3. Respondent excepts to the ALJ’s finding and conclusion that Respondent’s Class and Collective Action Waiver violates Section 8(a)(1) of the Act. (ALJD at 4:39–4:42).

4. Respondent excepts to the ALJ's application of the legal standard stated in *D.R. Horton*, 357 NLRB No. 184 (2012), *Murphy Oil, USA, Inc.*, 361 NLRB No. 72 (2014), *Cellular Sales of Missouri, LLC*, 362 NLRB No. 27 (2015), and/or *Lutheran-Heritage Village-Livonia*, 343 NLRB 646 (2004) to the record evidence presented in this case.
5. Respondent excepts to any finding by the ALJ that employees would reasonably construe the Class and Collective Action Waiver to prohibit protected activity under Section 7 of the Act. (ALJD at 4:18–4:42).
6. Respondent excepts to the ALJ's application of and adherence to the NLRB's holdings in *D.R. Horton*, 357 NLRB No. 184 (2012), *Murphy Oil, USA, Inc.*, 361 NLRB No. 72 (2014), *Cellular Sales of Missouri, LLC*, 362 NLRB No. 27 (2015), and/or *Lutheran-Heritage Village-Livonia*, 343 NLRB 646 (2004) to the extent those holdings conflict with and/or were rejected by the Fifth Circuit in *D.R. Horton, Inc. v. National Labor Relations Board*, 737 F.3d 344 (5th Cir. 2013) and should be overturned by the United States Supreme Court, as well as any reviewing Court of Appeal. (ALJD at 4:16–4:42).

Respectfully submitted,

By: /s/ Lawrence J. McNamara
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**ATTORNEYS FOR RESPONDENT
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CERTIFICATE OF SERVICE

Respondent's Exceptions to Administrative Law Judge's Decision is being served by
electronic filing at www.nlr.gov upon opposing counsel.

/s/ Lawrence J. McNamara
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